

Senate Study Bill 1079 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE DIVISION
BILL)

A BILL FOR

1 An Act relating to a risk management framework for insurers and
2 insurance groups and including penalty and applicability
3 provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 522.1 Purpose and scope —
2 legislative intent.

3 1. The purpose of this chapter is to require insurers
4 to maintain a risk management framework and complete an own
5 risk and solvency assessment and to provide guidance and
6 instructions for the filing of own risk and solvency assessment
7 reports with the commissioner.

8 2. The general assembly finds and declares that own risk and
9 solvency assessment summary reports will contain confidential
10 and sensitive information related to an insurer's or insurance
11 group's identification of risks material and relevant to the
12 insurer or insurance group filing the report. This information
13 will include proprietary and trade secret information that has
14 the potential for harm and competitive disadvantage to the
15 insurer or insurance group if the information is made public.
16 It is the intent of the general assembly that own risk and
17 solvency assessment summary reports filed with the commissioner
18 are confidential documents, shall be shared only as provided in
19 this chapter and to assist the commissioner in the performance
20 of the commissioner's duties, and shall not be subject to
21 public disclosure.

22 Sec. 2. NEW SECTION. 522.2 Definitions.

23 1. "Affiliate", or a person affiliated with a specific
24 person, means the same as defined in section 521A.1.

25 2. "Commissioner" means the Iowa commissioner of insurance.

26 3. "Insurance group" means the insurers and affiliates
27 included within an insurance holding company system as defined
28 in section 521A.1.

29 4. "Insurer" means the same as defined in section 521A.1.

30 5. "Own risk and solvency assessment" or "assessment" means
31 a confidential internal assessment, appropriate to the nature,
32 scale, and complexity of an insurer or insurance group, that is
33 conducted by that insurer or insurance group, of the material
34 and relevant risks associated with the insurer or insurance
35 group's current business plan, and the sufficiency of capital

1 resources to support those risks.

2 6. *"Own risk and solvency assessment guidance manual"* or
3 *"guidance manual"* means the current version of the own risk
4 and solvency assessment guidance manual developed and adopted
5 by the national association of insurance commissioners and
6 amended from time to time. A change in the guidance manual is
7 effective and applicable to this chapter on January 1 following
8 the calendar year in which the change was adopted by the
9 national association of insurance commissioners.

10 7. *"Own risk and solvency assessment summary report"* or
11 *"summary report"* means a confidential high-level summary of the
12 own risk and solvency assessment conducted by an insurer or
13 insurance group.

14 8. *"Supervisory college"* means a temporary or permanent
15 forum for communication and cooperation between regulators
16 charged with supervision of an insurer or its affiliates.

17 Sec. 3. NEW SECTION. **522.3 Risk management framework.**

18 An insurer shall maintain a risk management framework to
19 assist the insurer with identifying, assessing, monitoring,
20 managing, and reporting on the insurer's material and relevant
21 risks. This requirement is satisfied if the insurance group
22 of which the insurer is a member maintains a risk management
23 framework applicable to the operations of the insurer.

24 Sec. 4. NEW SECTION. **522.4 Own risk and solvency assessment**
25 **requirement.**

26 1. Subject to section 522.6, an insurer, or the insurance
27 group of which the insurer is a member, shall regularly conduct
28 an own risk and solvency assessment consistent and comparable
29 with the assessment process contained in the own risk and
30 solvency assessment guidance manual.

31 2. An own risk and solvency assessment shall be conducted at
32 least annually, but an assessment shall also be conducted at
33 any time when there are significant changes to the risk profile
34 of an insurer or the insurance group of which the insurer is a
35 member.

1 Sec. 5. NEW SECTION. **522.5 Own risk and solvency assessment**
2 **summary report.**

3 1. *a.* Beginning in 2015, an insurer shall annually submit
4 to the commissioner an own risk and solvency assessment summary
5 report or any combination of reports that together contain the
6 information described in the own risk and solvency assessment
7 guidance manual that is applicable to the insurer or the
8 insurance group of which the insurer is a member.

9 *b.* If the insurer is a member of an insurance group, the
10 insurer shall submit the report or reports required by this
11 section to the state commissioner that is the lead state
12 commissioner of the insurance group of which the insurer is
13 a member, as determined by the procedures contained in the
14 financial analysis handbook adopted by the national association
15 of insurance commissioners.

16 *c.* The own risk and solvency assessment summary report shall
17 be filed after the insurer or the insurance group of which the
18 insurer is a member conducts the insurer's or insurance group's
19 strategic planning process. The insurer or insurance group
20 shall notify the commissioner as to the date that the summary
21 report will be filed.

22 2. The own risk and solvency assessment summary report shall
23 include the signature of the insurer's or insurance group's
24 chief risk officer or another executive having responsibility
25 for the oversight of the insurer's enterprise risk management
26 process, attesting that to the best of that person's belief and
27 knowledge the insurer applies the enterprise risk management
28 process described in the summary report and that a copy of the
29 summary report has been provided to the insurer's or insurance
30 group's board of directors or the appropriate committee of that
31 board.

32 3. An insurer may comply with subsection 1 by submitting
33 the most recent and substantially similar report provided by
34 the insurer or another member of the insurance group of which
35 the insurer is a member to the commissioner of insurance of

1 another state or to a supervisor or regulator of a foreign
2 jurisdiction, if that report provides information that is
3 comparable to the information described in the own risk and
4 solvency assessment guidance manual. Any such report that is
5 submitted in a language other than English must be accompanied
6 by a translation of that report into the English language.

7 Sec. 6. NEW SECTION. 522.6 Exemption.

8 1. An insurer is exempt from the requirements of this
9 chapter if both of the following apply:

10 a. The insurer has annual direct written and unaffiliated
11 assumed premium, including international direct and assumed
12 premium, but excluding premiums reinsured with the federal crop
13 insurance corporation and the federal flood program, of less
14 than five hundred million dollars.

15 b. The insurance group of which the insurer is a member
16 has annual direct written and unaffiliated assumed premium,
17 including international direct and assumed premium, but
18 excluding premiums reinsured with the federal crop insurance
19 corporation and the federal flood program, of less than one
20 billion dollars.

21 2. If an insurer qualifies for exemption from the
22 requirements of this chapter pursuant to paragraph "a" of
23 subsection 1, but the insurance group of which the insurer
24 is a member does not qualify for exemption pursuant to
25 paragraph "b" of subsection 1, then the own risk and solvency
26 assessment summary report that is required pursuant to section
27 521H.5 shall include information concerning every insurer
28 in the insurance group. This requirement may be satisfied
29 by the submission of more than one summary report for any
30 combination of insurers in the insurance group provided that
31 the combination of reports submitted includes every insurer in
32 the insurance group.

33 3. If an insurer does not qualify for exemption pursuant
34 to paragraph "a" of subsection 1, but the insurance group of
35 which the insurer is a member qualifies for exemption pursuant

1 to paragraph "b" of subsection 1, then the only own risk and
2 solvency assessment summary report that is required pursuant to
3 section 522.5 is the report applicable to that insurer.

4 4. An insurer that does not qualify for exemption pursuant
5 to subsection 1 may apply to the commissioner for a waiver
6 from the requirements of this chapter based upon unique
7 circumstances. In deciding whether to grant the insurer's
8 request for a waiver, the commissioner may consider the type
9 and volume of business written, ownership and organizational
10 structure, and any other factors the commissioner considers
11 relevant to the insurer or the insurance group of which the
12 insurer is a member. If the insurer is part of an insurance
13 group with insurers domiciled in more than one state, the
14 commissioner shall coordinate with the state commissioner
15 that is the lead state commissioner of the insurance group,
16 as determined pursuant to section 522.5, and with the other
17 domiciliary commissioners in considering whether to grant the
18 insurer's request for a waiver.

19 5. Notwithstanding the exemptions provided in this section,
20 the commissioner may do the following:

21 a. Require that an insurer maintain a risk management
22 framework, conduct an own risk and solvency assessment, and
23 file an own risk and solvency assessment summary report based
24 on unique circumstances including but not limited to the type
25 and volume of business written, ownership and organizational
26 structure, federal agency requests, and international
27 supervisor requests.

28 b. Require that an insurer maintain a risk management
29 framework, conduct an own risk and solvency assessment,
30 and file an own risk and solvency assessment summary report
31 if the insurer has a risk-based capital level that is a
32 company-action-level event as set forth in section 521E.3 for
33 insurers and section 521F.4 for health organizations or that
34 would cause the insurer to be in hazardous financial condition
35 as set forth in 191 IAC 110, or if the insurer otherwise

1 exhibits qualities of a troubled insurer as determined by the
2 commissioner.

3 6. If an insurer that qualifies for an exemption pursuant
4 to subsection 1 subsequently no longer qualifies for that
5 exemption due to changes in premium as reflected in the
6 insurer's most recent annual statement or in the most recent
7 annual statements of the other insurers in the insurance group
8 of which the insurer is a member, the insurer shall have one
9 year following the year the threshold is exceeded to comply
10 with the requirements of this chapter.

11 **Sec. 7. NEW SECTION. 522.7 Contents of own risk and**
12 **solvency assessment summary report.**

13 1. The own risk and solvency assessment summary report
14 shall be prepared consistent with the own risk and solvency
15 assessment guidance manual, subject to the requirements of
16 subsection 2. Documentation and supporting information shall
17 be maintained and made available upon examination of an insurer
18 or upon request of the commissioner.

19 2. The review of an own risk and solvency assessment summary
20 report, and any additional requests for information, shall
21 be made using procedures similar to the procedures currently
22 used in the analysis and examination of multistate or global
23 insurers and insurance groups.

24 **Sec. 8. NEW SECTION. 522.8 Confidentiality.**

25 1. Documents, materials, or other information, including
26 an own risk and solvency assessment summary report, in
27 the possession or control of the insurance division of the
28 department of commerce, that are obtained by, created by,
29 or disclosed to the commissioner or to any other person
30 pursuant to this chapter, are recognized in this state as being
31 proprietary and containing trade secrets. All such documents,
32 materials, or other information, including the summary report,
33 shall be confidential and privileged, shall not be subject to
34 chapter 22, shall not be subject to subpoena, and shall not be
35 subject to discovery or admissible in evidence in any private

1 civil action. However, the commissioner is authorized to use
2 such documents, materials, or other information, including the
3 summary report, in the furtherance of any regulatory or legal
4 action brought as a part of the commissioner's official duties.
5 The commissioner shall not otherwise make the documents,
6 materials, or other information, including the summary report,
7 public without the prior written consent of the insurer that
8 provided the documents, materials, or other information,
9 including the summary report.

10 2. The commissioner or any person who received documents,
11 materials, or other information related to own risk and
12 solvency assessments, through examination or otherwise, while
13 acting under the authority of the commissioner or with whom
14 such documents, materials, or other information are shared
15 pursuant to this chapter, shall not be permitted or required to
16 testify in any private civil action concerning any confidential
17 documents, materials, or information, including summary
18 reports, subject to subsection 1.

19 3. In order to assist in the performance of the
20 commissioner's regulatory duties, the commissioner may do any
21 of the following:

22 a. Upon request, share documents, materials, or other own
23 risk and solvency assessment-related information, including
24 the confidential and privileged documents, materials, or
25 information subject to subsection 1, and including proprietary
26 and trade secret documents, materials, or information, with
27 other state, federal, or international financial regulatory
28 agencies, including members of any supervisory college, with
29 the national association of insurance commissioners, and with
30 any third-party consultants designated by the commissioner,
31 provided that the recipient agrees in writing to maintain
32 the confidentiality and privileged status of the documents,
33 materials, or other assessment-related information and verifies
34 in writing the legal authority to maintain such confidentiality
35 and privilege.

1 *b.* Receive documents, materials, or other own risk
2 and solvency assessment-related information, including
3 otherwise confidential and privileged documents, materials,
4 or information, and proprietary and trade secret documents,
5 materials, and information, from regulatory officials of other
6 foreign or domestic jurisdictions, including members of any
7 supervisory college, and from the national association of
8 insurance commissioners, and shall maintain as confidential or
9 privileged any documents, materials, or information received
10 with notice or the understanding that the documents, materials,
11 or other information received are confidential and privileged
12 under the laws of the jurisdiction that is the source of the
13 documents, materials, or information.

14 4. In order to assist in the performance of the
15 commissioner's regulatory duties, the commissioner shall enter
16 into a written agreement with the national association of
17 insurance commissioners or with a third-party consultant that
18 is consistent with subsection 3, governing the sharing and use
19 of information provided pursuant to this chapter, and that does
20 all of the following:

21 *a.* Specifies procedures and protocols regarding the
22 confidentiality and security of information shared with the
23 national association of insurance commissioners or with a
24 third-party consultant pursuant to this chapter, including
25 procedures and protocols of the national association of
26 insurance commissioners for sharing information with other
27 state regulators from states in which an insurance group has
28 domiciled insurers. The agreement shall require that the
29 recipient of such information must agree in writing to maintain
30 the confidentiality and privileged status of the own risk and
31 solvency assessment-related documents, materials, or other
32 information and verify in writing the legal authority to
33 maintain confidentiality and privilege.

34 *b.* Specifies that ownership of information shared with
35 the national association of insurance commissioners or with

1 a third-party consultant pursuant to this chapter remains
2 with the commissioner and that use of the information by
3 the national association of insurance commissioners or by a
4 third-party consultant is subject to the direction of the
5 commissioner.

6 *c.* Prohibits the national association of insurance
7 commissioners or a third-party consultant from storing the
8 information shared pursuant to this chapter in a permanent
9 database after the underlying analysis is completed.

10 *d.* Requires that prompt notice be given to an insurer whose
11 confidential information is in the possession of the national
12 association of insurance commissioners or a third-party
13 consultant pursuant to this chapter, that the information is
14 subject to a request or subpoena to the national association
15 of insurance commissioners or the third-party consultant for
16 disclosure or production.

17 *e.* Requires the national association of insurance
18 commissioners or a third-party consultant to consent to
19 intervention by an insurer in any judicial or administrative
20 action in which the national association of insurance
21 commissioners or the third-party consultant may be required
22 to disclose confidential information about the insurer that
23 was shared with the association or consultant pursuant to this
24 chapter.

25 *f.* In the case of an agreement involving a third-party
26 consultant, provides for the insurer's written consent to the
27 agreement.

28 5. The sharing of documents, materials, or information by
29 the commissioner pursuant to this chapter shall not constitute
30 a delegation of regulatory authority or rulemaking, and the
31 commissioner is solely responsible for the administration,
32 execution, and enforcement of the provisions of this chapter.

33 6. No waiver of any applicable privilege or claim of
34 confidentiality in the documents, proprietary and trade secret
35 materials, or other own risk and solvency assessment-related

1 information shall occur as a result of the disclosure of such
2 documents, materials, or information to the commissioner under
3 this section or as a result of the sharing of those documents,
4 materials, or information as authorized in this chapter.

5 7. Documents, materials, or other information in the
6 possession or control of the national association of insurance
7 commissioners or a third-party consultant pursuant to this
8 chapter shall be confidential and privileged, shall not be
9 subject to chapter 22, shall not be subject to subpoena, and
10 shall not be subject to discovery or admissible in evidence in
11 any private civil action.

12 Sec. 9. NEW SECTION. **522.9 Penalties.**

13 1. If an insurer fails, without just cause, to file an
14 own risk and solvency assessment summary report by the filing
15 date stipulated to the commissioner pursuant to section 522.5,
16 subsection 1, the commissioner shall, after notice and hearing,
17 impose a penalty of five hundred dollars for each day after
18 the stipulated date that the summary report is not filed. The
19 penalties shall be collected by the commissioner and deposited
20 in the general fund of the state. The maximum penalty which
21 may be imposed under this section is fifty thousand dollars.

22 2. The commissioner may reduce the penalty to be imposed if
23 the insurer demonstrates to the commissioner that imposition
24 of the penalty would constitute a financial hardship to the
25 insurer.

26 Sec. 10. NEW SECTION. **522.10 Severability.**

27 If any provision of this chapter, or the application of this
28 chapter to any person or circumstance, is held invalid, such
29 holding shall not affect the provisions or applications of this
30 chapter which can be given effect without the invalid provision
31 or application, and to that end the provisions of this chapter
32 are severable.

33 Sec. 11. **APPLICABILITY DATE.** The provisions of this Act are
34 applicable beginning on January 1, 2015.

35

EXPLANATION

1 This bill creates new Code chapter 522, which requires
2 certain insurers domiciled in the state to maintain a risk
3 management framework, complete an own risk and solvency
4 assessment, and file a summary report of the assessment with
5 the commissioner of insurance. Generally, the Code chapter
6 applies to insurers with annual premium of \$500 million or
7 more and to insurance groups of which domiciled insurers are
8 members, with annual premium of \$1 billion or more.

9 The bill requires an insurer or the insurance group of
10 which the insurer is a member, to regularly conduct an own
11 risk and solvency assessment consistent and comparable
12 with the assessment process contained in the own risk and
13 solvency assessment guidance manual developed and adopted by
14 the national association of insurance commissioners. The
15 assessment must be conducted at least annually and also at any
16 time there are significant changes to the risk profile of an
17 insurer or insurance group.

18 Beginning in 2015, an insurer is required to submit an
19 annual own risk and solvency assessment summary report to the
20 commissioner that contains the information described in the
21 guidance manual. The report shall be filed after the insurer
22 or insurance group of which the insurer is a member conducts
23 its strategic planning process. The insurer or insurance group
24 must notify the commissioner as to the date that the summary
25 report will be filed. The report must be attested to by the
26 insurer's or insurance group's chief risk officer or other
27 officer having responsibility for risk management and must be
28 written in English or accompanied by a translation written in
29 English.

30 An insurer is exempt from the new Code chapter's
31 requirements if the insurer has annual premium of less than
32 \$500 million and the insurance group of which the insurer is
33 a member has annual premium of less than \$1 billion. If an
34 insurer is exempt but the insurance group is not exempt, the
35 own risk and solvency assessment summary report must include

1 information about every insurer in the insurance group. If
2 an insurer is not exempt but the insurance group of which the
3 insurer is a member is exempt, the assessment summary report
4 must only include that insurer.

5 An insurer that does not qualify for exemption may apply
6 to the commissioner for a waiver from the requirements, based
7 on unique circumstances. Even if an insurer is qualified
8 for exemption from the new Code chapter's requirements, the
9 commissioner may require the insurer to meet those requirements
10 based on the unique circumstances of the insurer or based on
11 the insurer's risk-based capital level or other reasons that
12 would cause the insurer to be in hazardous financial condition
13 or to exhibit qualities of a troubled insurer as determined by
14 the commissioner.

15 If an insurer that qualifies for an exemption subsequently
16 no longer qualifies due to changes in premium, the insurer has
17 one year following the increase in premium to comply with the
18 new Code chapter's requirements.

19 The own risk and solvency assessment summary report shall be
20 prepared consistent with the own risk and solvency assessment
21 guidance manual. Documentation and supporting information
22 shall be maintained and available when an insurer is examined
23 or at the request of the commissioner. The summary report
24 shall be reviewed using procedures similar to those currently
25 used in the analysis and examination of multistate or global
26 insurers and insurance groups.

27 Documents, materials, or other information, including own
28 risk and solvency assessment summary reports, in the possession
29 or control of the insurance division of the department of
30 commerce or any other person pursuant to the bill that are
31 obtained by, created by, or disclosed to the commissioner
32 or to any other person pursuant to the bill, are recognized
33 in this state as being proprietary and containing trade
34 secrets. Such documents, materials, or other information is
35 confidential, is not subject to Code chapter 22 (open records),

1 shall not be subject to subpoena, and shall not be subject to
2 discovery or evidence in any private civil action. However,
3 the commissioner is authorized to use such information in the
4 furtherance of any regulatory or legal action brought as part
5 of the commissioner's official duties. The commissioner shall
6 not otherwise make such information public without the prior
7 written consent of the insurer. The commissioner or any other
8 person with access to information obtained pursuant to the bill
9 shall not be permitted or required to testify in any private
10 civil action concerning confidential information.

11 In performing regulatory duties, the commissioner may
12 share confidential and privileged information with specified
13 regulatory and other entities including certain third-party
14 consultants, and receive confidential and privileged
15 information from other specified regulatory and other entities.

16 In performing regulatory duties, the commissioner is
17 required to enter into a written agreement with the national
18 association of insurance commissioners or with a third-party
19 consultant that governs the sharing and use of information
20 provided pursuant to the bill. The agreement must specify
21 procedures and protocols for the confidentiality and security
22 of information shared and require that the recipient of such
23 information agree in writing to maintain the confidential and
24 privileged status of the information; specify that ownership of
25 shared information remains with the commissioner, who directs
26 its use; prohibit storage of the information in a permanent
27 database after analysis is complete; require prompt notice
28 to an insurer if the insurer's information is subject to a
29 request or subpoena for disclosure or production; require
30 that an insurer be allowed to intervene in any judicial or
31 administrative action in which the insurer's confidential
32 information may be disclosed; and provide for the insurer's
33 consent to retention of a third-party consultant.

34 The sharing of information pursuant to the bill does not
35 constitute a delegation of regulatory authority or rulemaking

1 by the commissioner, or a waiver of any applicable privilege
2 or claim of confidentiality, and such shared information is
3 confidential and privileged, not subject to Code chapter 22,
4 not subject to subpoena, and not subject to discovery or
5 admissible in evidence in any private civil action.

6 If an insurer, without just cause, fails to file an own
7 risk and solvency assessment summary report by the filing date
8 stipulated to the commissioner pursuant to new Code section
9 521H.5, the commissioner, after notice and hearing, shall
10 impose a penalty of \$500 for each day after that date that
11 the summary report is not filed, up to a maximum penalty of
12 \$50,000. The penalties collected by the commissioner are to be
13 deposited in the general fund of the state. The commissioner
14 may reduce the penalty if the insurer demonstrates that
15 imposition of the penalty would constitute a financial hardship
16 to the insurer.

17 The provisions of the new Code chapter are severable in the
18 event that the application of the Code chapter to any person or
19 circumstance is held to be invalid.

20 New Code chapter 522 is applicable beginning on January 1,
21 2015.